IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 128 OF 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
BARODA CHEMISTS PVT.LTD. - Opponent(s)

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Appearance :
MSHRI MANISH R. BHATT for Applicant(s).
NONE for Opponent(s) though Office Report shows that it is served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/11/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income Tax Appellate Tribunal, Ahmedabad Bench `A', in the matter of I.T. Appeal Nos.2353 to

2359/Ahd/1990 relating to the Assessment Years 1979-80 to 1985-86, has referred the following question for the opinion of this Court under Section-256(1) of the Income Tax Act, 1961 (hereafter referred to as `the Act' for short):

> *"Whether on the facts and in the circumstances of the case, the Tribunal was justified in stating that the returns filed by the assessee in the impugned assessment years were voluntary and true disclosure of income when the assessee is unable to give particulars of the income?"*

2. It appears that the Assessee was assessed and losses were determined, taking advantage of the Amnesty Scheme, the Assessee filed returns for the Assessment Years 1979-80 to 1986-87. The Assessing Officer, accepted these returns and granted benefit of the Amnesty Scheme to the Assessee. However, the Commissioner of Income-Tax was of the opinion that the orders passed by the Assessing Officer were prejudicial to the interest of the Revenue and the same were clearly erroneous. He also observed that the entire amount credited to the books should have been considered in the year in which the amounts have been actually credited; he also observed that since by Assessee's own admission, these amounts were from unexplained sources, there was *prima facie* case for addition of the entire amount in the year of credit.

Finally, he observed that since the Assessee had filed the returns voluntarily and paid taxes thereon, the said assessments shall be treated as assessment on protective basis and the Assessing Officer would be at liberty to consider the entire amount in the year of credit.

3. Being aggrieved by the said exercise of powers by the Commissioner under Section-263 of the Act, the Assessee preferred Appeal Nos.2353 to 2359/Ahd/1990. The Tribunal, after hearing the parties, observed that though the Assessee disclosed additional income for the Assessment Years 1978-79 to 1986-87, but, the CIT Baroda, while initiating proceedings under Section-263 of the Act upto the Assessment Year 1985-86 only, did not assign any reasons as to why action was not taken for the Assessment Years 1986-87. The Tribunal also observed that in pursuance to the order passed under Section-263 of the Act, the income was added in the Assessment Year 1988-89 to the tune of Rs.5,59,000/-, the said order of assessment was challenged and the order has been set aside by the CIT (Appeals) – III, Baroda, by his order dated 8th March, 1995. The Tribunal lastly observed that the assessment orders passed under Section 143(3)/147(1)(a) of the Act could not be said to be erroneous and prejudicial to the interest of the Revenue.

4. The question referred for the opinion of this Court is basically a challenge to the finding of fact which was recorded by the Tribunal. If the Tribunal had held that filing of the returns for the impugned assessment years were voluntary and true disclosure of the income, then, the said finding would be a finding of fact and cannot be challenged simply on the ground that the Assessee was unable to give particulars of income. In our opinion, the Tribunal was right and justified in holding in favour of the Assessee.

5. The question referred for our opinion is answered in the affirmative, against the interest of the Revenue and in favour of the Assessee. The Reference stands disposed of accordingly. No costs.

[***R.S.Garg, J.***]

[***D. H. Waghela, J.***]

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